

(1985) 12 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 1705 of 1985

Dr. G. Ramakrishna

APPELLANT

Vs

Chancellor

RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

Karnataka State Universities Act, 1976 — Section 48

Citation : (1986) ILR (Kar) 289

Hon'ble Judges : Murlidher Rao, J

Bench : Single Bench

Advocate : Jayaram, for the Appellant; S. Udayashankar, HCGP for R-1, G. P. Sivaprakash for R-2, V. Tarakaram for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Murlidher Rao, J.—Petitioner who was a candidate contesting for the membership of the University-Syndicate has challenged the election of the second respondent and has sought for a declaration that he be declared as elected to the Syndicate. Petitioner is a Reader in English. He is a member of the Academic Council. He along with five others contested for the election to the Syndicate, The election is governed by the Bangalore University Statutes which provide the system of preferential representation by means of Single Transferable Vote. In the election so held, the petitioner, respondent-2 and four others secured the following first preferential votes; petitioner - 25 ; Respondent- 2 - 23 ; Dr. Chowdiah - 16 Dr. M. P. Venkatappa - 15; Dr. C. S. Sivarudrappa - 10 and K. E. Radhakrishna - 5, Since no one had secured the quota, the Returning Officer had to resort to the Rule of exclusion. Radhakrishna was first to be excluded Followed by Sivarudrappa, Venkatappa and Dr. B. N. Chowdaiah. In this process of exclusion, the petitioner and the second respondent both secured 44 votes. The Chairman having found that there was equality of votes, determined the ejection by lot. Before doing so, he obtained the consent of both the candidates and after the lot was so drawn, the second respondent was declared successful. In adopting this

procedure of drawing a lot or determining the election by lot, the Chairman relied upon Clause (6) of para 12.20 in Chapter XII of the Bangalore University Statutes. The said Clause reads thus :

"(6) After the counting is over, the Returning Officer shall intimate to the Chairman the number of votes secured by each candidates and the Chairman shall declare result. In case of equality of votes, success shall be determined by lot."

2. The petitioner represented the matter to the Chancellor u/s 48 of the Karnataka Universities Act, 1976. It is the grievance of the petitioner, that though he had filed the representation on 18-2-1984, the Chancellor decided the matter only on 11-1-1985. (Though the original order is dated 11-1-1984, by subsequent corrigendum it has been corrected as 11-1-1985). The petitioner has narrated in detail the protests made by him to expedite the disposal of his representation to the Chancellor which only demonstrate -his anguish and anxiety for expeditious decision. It appears that he had to resort to Dharna before Raj Bhavan on 15-1-1985. This aspect of the matter is not of much relevance to decide the point in issue.

3. The Chancellor has rejected the representation of the petitioner as per Annexure "J". The criticism levelled by the petitioner's Counsel regarding this order is that the Chancellor was not justified in calling for para-wise remarks of the Bangalore University nor was he justified in asking the Commissioner for Public Instruction in Karnataka to furnish a report. It is contended that the Chancellor is influenced by the para-wise remarks of the Bangalore University and the report of the Commissioner for Public Instruction, dated 15-2-1984.

4. In this context, it is necessary to mention that u/s 48 of the Karnataka Universities Act, reference to Chancellor and his decision in this matter is purely personal and as such he could not have called upon the University to furnish the para-wise remarks nor the C.P.I. to hold an enquiry. The said Section reads thus:

"48. Disputes regarding memberships--(f) If any question raises whether any person has been duly elected or appointed as, or is entitled to be, a member of any Authority or other body of the University, the matter shall be referred to the Chancellor."

5. Apropos it is relevant to mention that the term of office of the Syndicate members is three years. Analysing the wordings of Section 48, it obvious that the Chancellor when an election dispute is referred acts as an arbitrator. In this context, Puttaswamy, J, has made the following observations in *Lingegowda v. Chancellor of University and ors* 1983 (1) KarLJ 321. In paragraph 41 it is stated thus:

".....In election petitions, it would be more appropriate for the Chancellor to frame issues or points for determination and call upon parties to lead such evidence as they propose to place and thus avoid any criticism of not affording

an opportunity to place evidence in support of his case."

This enunciation is enough to conclude that the Chancellor acts as an Election Tribunal exercising quasi judicial powers. If that be so, his decision must be uninfluenced by any external aid or opinion given by any other authority. Chancellor is not expected to refer the disputed u/s 48 to any other outside agency. In the process of solving the dispute and taking a decision, his decision and his conclusion are final and it should be based on his own appreciation of the material and his own reasoning. He cannot import the opinion or the advise of any other authority. In the instant case, the reference to the Commissioner for Public Instruction in Karnataka was clearly unwarranted. The Chancellor could not have referred the matter to the Commissioner for Public Instruction and get influenced by report furnished by him. The Statute does not contem-(sic) (sic) ch a procedure. Similarly, the calling of the para-(sic) from the Bangalore University is also unwarranted. The para-wise remarks given by the officers or the authorities of" the Bangalore University cannot be taken into consideration by the Chancellor while deciding the election dispute u/s 48. The dispute is between the two contesting candidates to a Statutory Body of the University. Therefore the Chancellor is required to act as a Tribunal without placing any reliance either on the para-wise remarks of the University or the opinion- furnished by the Commissioner for Public Instruction. The criticism levelled by the petitioner's Counsel in this regard is well-founded and the mentioning of this fact in Annexure "J" smacks the Chancellor's decision of its sanctity and independence. The records placed by the Counsel in this regard indicate that on the orders of the Chancellor, remarks from the Registrar, Bangalore University were called for and the Registrar has furnished his remarks on the petition filed by G. Ramakrishna. Thereafter the report of the Commissioner for Public Instruction was called for, who has sent his report by his D.O. letter dated 1-6-1984, which is available in the records. In his report, the Commissioner for Public Instruction has stated as follows :

".....I am convinced that Statute 12.20(6) is the one and the only relevant provision which can be invoked in the instant case. I have also satisfied myself the procedure of Election at a meeting under Statute 12.20(6) has been - duly followed that the Returning Officer intimated the factual position to the Chairman namely- Vice Chancellor and it is the latter who is authorised to declare the results. The procedure is different for Election other than at a meeting wherein the Returning Officer is competent to declare the results which is provided for in Statute 12.25(13)".

He has also recommended that the election petition filed by G. Ramakrishna may be dismissed.

6. I fail to understand how such a procedure could be adopted in exercising a statutory power exclusively given to the Chancellor u/s 48 of the Universities Act. A Judicial decision does not admit of such a step being taken by an authority who has been exclusively conferred with the power.

The Chancellor, who happens to be the executive head in the State and is at the helm of the affairs of the University being the repository of this power, should strictly adhere to the spirit and intent of legislation. Any deviation, in the exercise of this statutory power, pollutes the faith and confidence reposed by the legislature in such a high Authority.

7. So far as the delay in the disposal of the election petition is concerned, it has to be held in favour of the petitioner keeping in view the term for which the members of the Syndicate have to function namely, 3 years. There is no justification for the Chancellor to have delayed the matter, to such an extent. Suffice it to say, that in election matters whenever a dispute is raised, the said dispute has to be adjudicated expeditiously so that the contesting candidate if succeeds would have time to function as a member of the body, for which he was contesting. The delay in such matters so as to allow the duration of the elected person to be spent out would be hazardous and would make the power given to the Chancellor u/s 48 illusory and otiose.

In the above background I should have remanded the matter to the Chancellor to consider the representation made by the petitioner, afresh and give an independent decision; but considering the delay that has already taken place and also considering the fact that the Chancellor has already expressed his opinion, though based on the report of the Commissioner for Public Instruction and the para-wise remarks of the Bangalore University, it would not be proper to remit the matter to the Chancellor; instead I would prefer to dispose of the matter myself in view of the duration of office for which the petitioner had contested.

8. The short question is whether the dispute, between the petitioner and the 2nd respondent having secured equal number of votes, should be resolved by resorting to sub-para (6) of Statute 12-20 or it should be resolved by resorting to sub-para (11) of Statute 12.25. Sub-para (6) of Statute 12.20 is already extracted above. Sub-para (1) of Statute ; 12.25 reads thus :

"(11) If when there is more than one surpluses are equal or if at any time it becomes necessary to exclude a candidate and two or more candidates have the same number of votes and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom fewest original votes are recorded shall have his surplus first distributed, or shall be first excluded, as the case may be. If the number of their original votes is the same, the Returning Officer shall decide by lot which candidate shall have his surplus distributed or be excluded."

The Statute 12.25 deals with the scrutiny and counting of votes. Sub-para (10) and (11) provide for a procedure as to how the votes have to be counted. Sub-para (10) in particular deals with cases where there are more than one vacancy; all but one vacancy having been filled up, only one vacancy remains unfilled; and at that stage who has to be eliminated from the contest and to declare the non-eliminated candidate as elected. The rule of exclusion or elimination being the

method provided in the system of single transferable vote, the, question that arises is as to whether this rule should be applied. In the instant case both the candidates have secured equal votes. Sub-para (11) provides for exclusion or elimination of the candidates on the basis of original votes i.e. first preferential vote. In the instant case, as mentioned above, the petitioner has secured 25 first preferential votes, whereas the 2nd respondent has secured 23 first preferential votes. If what is provided in sub-para (11) is applied to the facts of this case, then it is obvious, that the 2nd respondent having secured less number of first preferential votes has to be eliminated, leaving the petitioner alone in the fray, who has to be declared elected. But it is contended by the respondents, that the procedure in sub-para (11) cannot be made applicable, because according to them, the said provision applies only in cases where both the candidates remaining in the fray are lowest on the poll. It is only if they are lowest on the poll regard has to be had to the original vote. Since in the instant case they are not lowest on the poll, the said provision is not applicable. It appears to me that this contention deserves to be accepted. In the process of counting, the petitioner and 2nd respondent have secured 44 votes and it cannot be said that both of them are lowest on the poll. Indeed they are the highest. The word "poll" has to be understood in the context of totality of votes and not confined to the original votes or first preferential vote. The said provision would be applicable in cases where there are more than one vacancy and two candidates are left in the fray, one of whom has got to be declared elected and it becomes necessary to exclude one of them. It is in this context that the procedure is provided as to how the last candidate has to be excluded. Further, in the instant case, before resorting to the procedure provided in sub-para (6) of Statute 12.20, the petitioner has given his consent. By giving his consent he has committed himself to abide by the verdict by lot. If that be so, his challenge on the ground that the said provision is not attracted cannot be justified. Therefore, I have to necessarily come to the conclusion that though the Chancellor was not justified in rejecting the petitioner's representation, acting on the basis of the para-wise remarks of the University and the report of the Commissioner for Public Instruction and further the delay in the disposal of the petition u/s 48, cannot be appreciated, nevertheless the consent given by the petitioner to abide by the procedure provided in Clause (6) of Statute 12.20 must stand he cannot be permitted to resile from his consent.

9. For the foregoing reasons, the relief asked for in this Writ Petition cannot be granted. Accordingly, this petition fails and the same is dismissed.